

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL HALLETT,	§	
	§	No. 520, 2009
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE	§	ID No. 0902016094
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 19, 2010

Decided: March 18, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 18th day of March 2010, it appears to the Court that:

(1) Michael Hallett appeals from his Superior Court guilty pleas to burglary second and attempted theft. He contends his guilty plea and the subsequent sentences imposed were deficient under Superior Court Rule 11 and must be vacated because he was improperly advised of the maximum sentence he faced and accordingly did not knowingly and voluntarily enter the guilty pleas. Hallett did not file a motion to withdraw his guilty plea in the Superior Court, and accordingly his claim was not properly raised before the trial court. Accordingly, we dismiss his appeal without prejudice.

(2) On May 28, 2009, Hallett pled guilty to charges of burglary second degree and attempted theft. Hallett was informed the State sought to sentence him as an habitual offender on the burglary charge and, if successful, the mandatory minimum sentence was 8 years with a maximum of life imprisonment. On the attempted theft charge, the trial court characterized it as a misdemeanor and advised Hallett that the maximum penalty was 1 year imprisonment, but that the guidelines “call for fines, costs, restitution, or, at most, a low level of probation.”

(3) Hallett’s plea agreement provided that he was pleading guilty to burglary second degree and attempted theft of less than \$1,000. It provided that “At the time of sentencing the State will file a motion to declare the defendant an Habitual Offender. . . . The State will recommend to have the defendant sentenced to 8 years Level 5 on the Burglary 2nd charge with a recommendation for probation on the theft charge.”

(4) At the sentencing hearing on August 7, 2009, Hallett was declared an habitual offender. On the charge of burglary second, the Superior Court sentenced Hallett to 15 years at Level V. On the charge of attempted theft less than a thousand dollars of a victim over 62, which is a felony, Hall was sentenced to two years Level V to run consecutive, suspended for 18 months at Level III. This appeal followed.

(5) Hallett contends his guilty pleas should be vacated because he was improperly advised of the maximum sentence he faced and did not knowingly and voluntarily enter pleas pursuant to the plea agreement. In *Johnson v. State*¹ we explained:

This Court has consistently held that it will not consider a claim of ineffective assistance of counsel on direct appeal if that issue has not been decided on the merits in the trial court. The rationale for this rule arises from the reviewing Court's need to have before it a complete record on the question of counsel's alleged incompetency. Moreover, we're a reviewing Court to consider the question without a hearing, trial counsel would have neither an opportunity to be heard, nor the chance to defend himself.

The same reasons that inform our refusal to consider cases alleging ineffective assistance of counsel on direct appeal apply with equal force to cases involving the withdrawal of a guilty plea based upon allegations that the defendant did not understand the consequences of pleading guilty. Accordingly, we conclude that if the claim challenging the trial court's acceptance of a guilty plea has not been addressed on the merits by the trial court, we will not consider it on direct appeal.²

(6) The proper avenue for relief, as we indicated in *Johnson*, is a Rule 61 motion in Superior Court.

NOW, THEREFORE, IT IS ORDERED that Hallett's appeal is **DISMISSED** without prejudice.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

¹ *Johnson v. State*, 962 A.2d 233 (Del. 2008).

² *Id.* at 234.